

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeene G. Kelly.

H.Q. Energy Services (U.S.), Inc.

v.

Docket Nos. EL01-19-007

New York Independent System Operator, Inc.

PSEG Energy Resources & Trade LLC

v.

Docket No. EL02-16-007

New York Independent System Operator, Inc.

ORDER GRANTING CLARIFICATION

(Issued January 23, 2006)

1. On November 21, 2005, the Commission issued an order setting for hearing and settlement judge proceedings questions relating to prices charged by the New York Independent System Operator (NYISO) for May 2000.¹ KeySpan-Ravenswood, Inc. (Ravenswood) seeks clarification that, pending a final Commission order in this proceeding, refunds already made by NYISO should not be returned or adjusted. The Commission grants the clarification requested by Ravenswood.

Background

2. On March 4, 2005, the Commission issued an order on remand, which found that the NYISO owed refunds for May 8 and 9, because it had improperly restated prices

¹ *H.Q. Energy Services (U.S.), Inc. v. New York Independent System Operator, Inc.*, 113 FERC ¶ 61,184 (2005) (November 21 Order).

during that period of time.² The March 4 Order required the NYISO to file a refund report within 30 days of the order, and to pay refunds and collect surcharges designed to reinstate the original market clearing prices for energy for the real-time market determined on May 8, 2000, and May 9, 2000.³

3. On June 2, 2005, while rehearing of the March 4 Order was pending, NYISO filed a report setting forth the manner in which it intended to reinstate the May 8 and 9 prices, and stating that refunds could be included in the invoices that NYISO would send to its members on July 8, 2005, with transfer of any refund payments occurring on July 20, 2005.⁴

4. In the November 21 Order, the Commission set for settlement judge and hearing proceedings the issues raised by the parties as to the determination of refunds.⁵

Request for Clarification or Rehearing

5. On November 29, 2005, Ravenswood filed a motion for clarification that the amounts previously refunded by NYISO should not be returned or adjusted until the Commission has considered the sufficiency and adequacy of the refunds proposed by NYISO and has determined the appropriate amount of refunds to be paid and surcharges to be collected.⁶ Ravenswood alleges that NYISO has, in fact, already made refunds by adjusting the invoices it made to customers in July 2005, as it proposed to do in its June 5 report.⁷ Ravenswood states that it understands the intent of the Commission's November 21 Rehearing Order was to preserve the *status quo* pending the outcome of the settlement and hearing process. It maintains the best way to effect that intention, considering that certain refunds have already been paid, is to wait until the conclusion of the procedures directed by the Commission in the November 21 Rehearing Order before any additional funds are transferred. While Ravenswood believes that further refunds will likely be ordered after the hearing or settlement, even if repayments are eventually required, the

² *H.Q. Energy Services (U.S.), Inc. v. New York Independent System Operator, Inc.*, 110 FERC ¶ 61,243 (2005) (March 4 Order).

³ *Id.* at Ordering Paragraph B.

⁴ June 2, 2005 NYISO refund report at 1.

⁵ November 21 Order at P 54.

⁶ Ravenswood asserts its motion was served on all parties to the proceeding.

⁷ Ravenswood request for clarification or rehearing at 3. NYISO confirms that it made refunds in this fashion, *see* NYISO response to request for clarification at 1.

payment of interest should adequately compensate for the time value of money. Furthermore, Ravenswood asserts it would be inefficient and unnecessarily burdensome to require additional transfers of money at this time when further revisions will likely be required upon conclusion of the settlement and hearing process.⁸ If the Commission denies the clarification requested by Ravenswood, in the alternative Ravenswood seeks rehearing.

6. NYISO filed a response to Ravenswood's motion, concurring that further refunds or payments, if any, in these dockets should await the outcome of settlement judge and hearing proceedings. NYISO states that it did in fact determine refunds and related payments for May 8 and 9, 2000 and include those refunds and related payments on the bills distributed to the NYISO market participants on July 20, 2005. NYISO maintains that it would impose an undue burden on its resources to undo the refunds issued in reliance on the Commission's prior order, and then re-impose some or all of the refunds at the conclusion of the pending proceedings resulting from the Rehearing Order. Moreover, it argues that, as pointed out by Ravenswood, the time value of any refunds will be compensated by interest payments in accordance with the Rehearing Order.⁹

Discussion

7. We will grant Ravenswood's request for clarification of the November 21 Order. At this time, any further action on refunds should await the outcome of the hearing and settlement proceedings that the Commission ordered in the November 21 Order. Allowing the retention of the refunds already paid by the NYISO should not result in undue harm, since should any portion of the refunds need to be returned, such payments shall include interest reflecting the time value of money.¹⁰

8. Ravenswood's alternative request for rehearing is dismissed since Ravenswood does not object to a determination made in the underlying November 21, 2005 Order, which did not address the issue of the status of previously paid refunds.

⁸ Ravenswood request for clarification or rehearing at 4.

⁹ NYISO response to request for clarification at 2.

¹⁰ As the Commission stated in its November 21 Order, interest is to be reflected in all refunds and surcharges in the event the parties are unable to reach a settlement and the Commission issues a final order on the merits. 113 FERC ¶ 61,184, P 40-41.

The Commission orders:

(A) Ravenswood's request for clarification is hereby granted, as discussed in the body of this order.

(B) Ravenswood's request for rehearing is dismissed.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.